IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7047 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JATASHANKE A PANDEY

Versus

CANARA BANK

Appearance:

MR PK JANI for Petitioner

MR RA MISHRA for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 11/02/2000

ORAL JUDGEMENT

This petition is filed against an order, passed by Canara Bank-respondent herein, dismissing the petitioner from service on 1-9-88, Annexure "A" to the petition.

2. The petitioner was serving as a Chokidar with the respondent-Bank. He was involved in a criminal case in connection with an incident which had taken place in August, 1983. The learned Sessions Judge convicted the petitioner for an offence punishable under Section 304 of the Indian Penal Code. Considering the evidence on record, the Sessions Court was of the opinion that though the petitioner-accused had right of self-defence, he exceeded the said right and caused death of the deceased. In the light of the said finding, the learned Sessions Judge convicted him for an offence under Section 304 of the Indian Penal Code. It is not in dispute that being aggrieved by the order of conviction and sentence, the petitioner has filed an appeal against the conviction, which is pending in this Court.

3. After considerable long time, an order of dismissal from service was passed against the petitioner which was challenged by the petitioner by filing this petition on October 19,1988. The learned Single Judge issued Rule and granted interim relief in terms of para 17 (B) of the petition. The learned Single Judge also recorded reasons in support of the order, inter-alia observing that it is doubtful as to whether the petitioner can be said to have been involved in offence of moral turpitude, when he has a right of self-defence and had exceeded the said right.

4. Several contentions were raised by the learned counsel for the petitioner. It was also submitted that no order could have been passed when the Criminal Appeal against conviction was pending. In this connection, my attention was invited by both the learned counsel to various decisions of the Supreme Court as well as of this Court.In my opinion, however, it is not necessary to enter into larger issues.

5. The question which deserves to be considered for the disposal of the present petition is as to whether in the facts and circumstances of the case, the respondent-Bank ought not to have afforded an opportunity of hearing or observed principles of natural justice in view of the phraseology used in clause (i) (b) of sub-section (1) of Section 10 of Banking Regulation Act, 1949. Section 10 of the Banking Regulation Act, 1949 (hereinafter referred to as "the Act") enacts that no banking company shall employ or continue the employment of any person " who is, or at any time has been,.....

> convicted by criminal court for offence involving moral turpitude "

6. Mr. Mishra, learned counsel for the

respondent-Bank, no doubt submitted that over and above the provisions of Section 10 (1) (i) (b), Chapter XI of the Canara Bank Service Code also enables the Bank to dismiss an employee from service, if he is convicted by a Court. Regulation 21 (3) (a) reads as under.

" If the employee is convicted, he may be dismissed with effect from the date of conviction or may be given any lesser punishment mentioned in Regulation 4 of this Chapter or be discharged as provided in Regulation 11 of this Chapter."

7. According to Mr. Mishra, the Regulations were made in pursuance of an award made by a competent tribunal and they are binding to the parties notwithstanding the provisions of Banking Regulation Act, 1949. I refrain from expressing any opinion one way or the other at this stage. In the facts and circumstances, however, in my opinion, it was necessary on part of the Bank to issue notice and to extend an opportunity of hearing to the petitioner before taking an action which is punitive in nature.

8. For the foregoing reasons, in my view, the petition deserves to be allowed and is accordingly allowed. The order dated 17-9-88, passed by the respondent-Bank (Annexure "A") is quashed and set aside. It is, however, clarified that the petitioner will remain under suspension. Rule is made absolute. It is, therefore, clarified that it is open to the Bank to take appropriate action in accordance with law after observing principles of natural justice. No order as to costs.

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